Serial #: 09/471,777; Docket 060021-331301
In reply to Office action mailed: 30 August 2004
Page: 7 of 15

Remarks

Claims 8 and 16 have been canceled and therefore claims 1-7, 9-15 and 17-20 are pending in this application. All of the pending claims are presently amended. In the Office Action mailed 5 December 2003, the Examiner has rejected the Application for various reasons, which will now be addressed in turn.

1. Drawings

The Examiner requires submission of formal drawings. Formals drawings have been submitted already on 5 May 2004. This submission was in connection with the previous Response.

2. 35 U.S.C. § 112 Rejection

In the previous Office Action, the Examiner rejected claims 1, 3, 4, 5, 6 under § 112 for insufficient antecedent basis. Those issues were rectified by amendment. Now, the Examiner rejected claims 1 through 20 under § 112's second paragraph as being indefinite. The Examiner asserts that claim 1:

> includes the broad recitation "receiving an activation signal"; "transmitting a signal to initiate retrieving of network performance data and network event data generated from at least one network monitor monitoring a network system and the relocating of the data into a common directory"; and "transmitting a signal to initiate the manipulation of the data and the loading of the manipulating data into a database" which are the narrower statement of the range/limitation.

Simplifying this confusing sentence by replacing the text of the claim with the text's element identifiers, the Examiner in effect states that claim 1:

> "includes the broad recitation **element (A)**; **element (B)**; and **element (C)** which are the narrower statement of the range/limitation."

Serial #: 09/471,777; Docket 060021-331301
In reply to Office action mailed: 30 August 2004
Page: 8 of 15

As such, Applicants are unsure which of elements (A), (B) and (C) is the broad

recitation and which element or elements (A), (B) and (C) are the narrow element(s). In

this paper, Applicants assume that the Examiner's intention is that element (B) is the broad

range and element (C) is the narrow range since both use the same term "signal".

Applicants have corrected this issue by clarifying the claim to read that the _first_ signal in

element (B) is different than the _second_ signal in element (C).

The Examiner rejects claim 2, stating that the limitation:

> "wherein the signal to initiate the manipulating and storing of the data initiates a
> controller program that transmits a signal to initiate the manipulation of the data"

is vague. Claim 2 has now been amended to read:

> "A method as recited in claim 1, further comprising: initiating a controller
> program."

The wording of claim 2 is now definite to one skilled in the art. In addition, all the pending

claims have been amended to shows that the various signals in the claims are distinguished

from one another. For example, claim 3 addresses an eighth signal and claim 4 addresses a

ninth signal. For at least these reasons, Applicants request that the § 112 rejections be

withdrawn.

3.   35 U.S.C. § 103(a) Rejection

Claims 1-20 are rejected under 35 U.S.C. § 103 as being anticipated by Chandra (US

6,397,359). To be a valid rejection, the Examiner must show that the reference teaches or

suggests each limitation in the claim. Claim 1 has presently been amended so that it

contains all of its previous limitations as well as the limitations formerly found in claim 8.

Serial #: 09/471,777; Docket 060021-331301
In reply to Office action mailed: 30 August 2004
Page: 9 of 15

Claim 8 has now been canceled. In the Office Action, the Examiner rejects both claim 1 and claim 8 individually based on the very same cited portions of Chandra. Therefore, the new amendment to claim 1 will not require any further search as it has already been fully examined and rejected.

As amended, claim 1 has the following limitations (which are shown next to the portions of Chandra that the Examiner asserts teaches the limitations):

Claim 1	Chandra Portion Cited by Examiner
A method for controlling the collection, manipulation and storage of network performance data and network event data of a network with service assurance capabilities, comprising the steps of:	System for tracking network performance on a continuing basis
(a) receiving an activation signal;	**These portions of Chandra allegedly teach or suggest elements (a) and (b)**
(b) transmitting a first signal	**col. 2, lines 50-60:** Networks are not static (hardware and software may be periodically added) and so traffic characteristics and the user's experience of network performance may change.
to initiate retrieval of network performance data and network event data,	
wherein the network performance and network event data are generated	

from a network-monitor that monitors a network system and then relocates the data into a common directory; and	**col. 3, lines 51-52:** A method for testing the performance of a network that has a series of endpoint nodes.

col. 8, lines 27-34: Timing records can be returned to a console, which then uses the records to analyze network performance by calculating statistics. Preferably the nodes calculate performance test results (such as throughput, transaction rate and response time) and report these results periodically to the console.

col. 9, lines 38-67: A management protocol agent allows other network management tools to be used by the network administrator to interface with the management information data base that is generated by the performance management system. The agent may allow access to configuration information, test results and event reports. A report generator creates reports (automatically or based on user requests), formats the reports and prints them. Crystal Reports may be used. Preferably reports are in HTML. A GUI support agent insulates the details of the agents in charge of performance monitoring from agents in charge of control configuration.

col. 10, lines 2-15: The GUI support agents gets changes from the object database and forwards them to the proper control node. The GUI support agent modifies, adds, or deletes objects in the object database based on user input from the GUI. |

Serial #: 09/471,777; Docket 060021-331301
In reply to Office action mailed: 30 August 2004
Page: 11 of 15

(c) transmitting a second signal	The Examiner admits that Chandra does not teach or suggest element (c) of the claim.
to initiate manipulation of the data	
and loading of the manipulated data into a database	
(d) transmitting a ninth signal to initiate a clean archive program for deleting files from an archive directory	Elements (d) through (h) were formerly claim 8. The portions of Chandra used to reject elements (a) and (b) above are also used to reject elements (d) through (h).
(e) transmitting a tenth signal to initiate a table extract program for extracting data from tables stored in the database	
(f) transmitting an eleventh signal to initiate a trigger reporting program for generating reports	
(g) transmitting a twelfth signal to initiate a purge record program for deleting records from the database; and	
(h) transmitting a thirteenth signal to Initiate a database backup program for backing up data stored on the database	

As is explained in the preamble of the claim, the present invention is used to collect,

to manipulate, and to store data. Importantly, the invention as claimed does not just

Serial #: 09/471,777; Docket 060021-331301
In reply to Office action mailed: 30 August 2004
Page: 12 of 15

process network performance data. Rather, it processes network event data (i.e., fault data) alongside the network performance data. Chandra and all other prior art fails to teach or suggest the combinatory processing of both types of data.

Historically, network service providers such as phone companies and ISPs have merely sold access to their networks. More and more, such network service providers now bundle access to their networks with other services. Now that extra services are being sold to their clients, phone companies and ISPs must provide "service assurance". "Service Assurance" is an extension of network management. It is the management of both the network and the bundled services. The main areas of this type of management include fault management, security management, and performance management.

Service Assurance has not been offered historically because the combined data was not available in one location or by one departmental team. For example, the network performance team monitors network performance data. To enable analysis of the network, the network performance team traditionally gathered, stored, and analyzed historical data of the network. The team could then compare the network performance of today with the network performance of a month or year ago.

The fault management team operates apart from the network performance team. The fault management team is concerned with the "here and now". When a fault event occurs in the system, the network must be quickly repaired and returned to operation.

The present invention gathers historical data of the network performance over time and stores it alongside the network event data concerning faults in the network. By analyzing the two types of data in tandem, one may determine why network performance

Serial #: 09/471,777; Docket 060021-331301
In reply to Office action mailed: 30 August 2004
Page: 13 of 15

today is better or worse than network performance from yesterday since fault events

degrade network performance.

The claims are directed to combining the two types of data and analyzing the

combined data. The preamble indicates that both "network performance data" and

"network event data" is handled. While Chandra appears to track network performance,

none of the cited portions of Chandra deal with event (i.e., fault) data. The above table lists

all of the cited portions of Chandra along with a summary of what each portion teaches.

Reading through all of the cited portions one can see that Chandra has no teaching or

suggestion of the combination of performance data with event/fault data. Thus, Chandra

fails to teach or suggest most of claim 1, including the following elements:

Element (b) of claim 1 requires that both the performance data and the fault/event

data are "relocate[d] ... into a common directory". None of the cited portions of Chandra

combine such disparate data into the same directory.

Element (d) of claim 1 requires that a "clean archive" module deletes files from an

archive directory. No portion of Chandra teaches or suggests any archive feature, especially

since Chandra does not deal with the combination of both performance data with event/fault

data.

Element (e) of claim 1 requires that once the fault/event data and the network

performance data are combined into a single database, a "table extract program" is used to

pull the merged data for analysis. No portion of Chandra teaches or suggests such an

extract feature, especially since Chandra does not deal with the combination of both

performance data with event/fault data.

Element (g) of claim 1 requires a "purge record program" that is used to remove the records in the database that deal with both event/fault information and network performance information. No portion of Chandra teaches or suggests such a purge feature especially, since Chandra does not deal with the combination of both performance data with event/fault data.

Element (h) of claim 1 requires a "database backup" feature. No such backup feature is taught or suggested in Chandra, especially since Chandra does not deal with the combination of both performance data with event/fault data.

As Chandra fails to teach or suggest the fundamental aspect of the present invention (i.e., the unusual combination of historical performance data with the 'here and now' fault data), Chandra fails to teach or suggest at least elements (b), (d), (e), (g), and (h) of claim 1. Applicants therefore request that the rejection of claim 1 be withdrawn. As claims 2 through 7 depend on claim 1, Applicants kindly request that these rejections be withdrawn as well. By the same rationales, Applicants ask that the rejections for the remaining claims 9 through 20 also be withdrawn.

4.   Summary

All of the Examiner's rejections and objections having been addressed, Applicants submit that all pending claims are allowable and request that a Notice of Allowance be issued in this case. In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at 612-607-7508. If any fees are due in connection with the filing of this paper, then the Commissioner is authorized to

Serial #: 09/471,777; Docket 060021-331301
In reply to Office action mailed: 30 August 2004
Page: 15 of 15

charge such fees including fees for any extension of time, to Deposit Account No. 50-1901

(Docket 060021-331301).

Respectfully submitted,

Steven C. Lieske, Reg. No. 47,749
Customer No. 29,838

OPPENHEIMER WOLFF & DONNELLY LLP
Plaza VII, Suite 3300
45 South Seventh Street
Minneapolis, MN 55405
Phone: 612-607-7508
Fax: 612-607-7100
E-mail: SLieske@Oppenheimer.com

OPPENHEIMER: 2282066 v02 11/30/2004